

No. 05 - 665 NOV 22 2005

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In The
Supreme Court of the United States

ERIK MATELJAN, EMILY AFTANDILIANS,
BENJAMIN FANALE, CAROL PAULICK,
MATIN DAVARI,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

**On Petition For Writ Of Certiorari To
The California Court Of Appeal, Fourth
Appellate District, Division One**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Since 1999, Police officers and prosecutors in the City and County of San Diego, California, have allowed unlicensed, unqualified, unsupervised contract employees to draw the blood of DUI suspects. The blood was drawn in dirty booking rooms, and sometimes in the jail garage where multiple patrol cars emitted exhaust. They re-used **contaminated** medical supplies from suspect to suspect in violation of state and federal safety standards. For years, defendants were kept in the dark. Law enforcement, in conjunction with city and county prosecutors, withheld these facts from petitioners here and *thousands* of unknown suspects that came before them.

The California Fourth District Court of Appeal, Division One, held there was a deliberate and systematic violation of law, but denied Petitioners' Fourth Amendment, Due Process and Equal Protection claims. The California Supreme Court denied review.

1. This Court should grant *certiorari* in light of the California Court's repudiation of this Court's holding in *Schmerber v. California*, 384 U.S. 737 (1966).
2. Law enforcement's wholesale disregard of local, state and federal health and safety protocols violated Petitioners' Fourth Amendment rights.
3. Law enforcement's intentional and wilful withholding of *Brady* discovery violated petitioners' rights to Equal Protection and Due Process.
4. The intentional, wilful, deliberate and systematic violation of the law by law enforcement and prosecutors warrants dismissal.

LIST OF PARTIES TO THE PROCEEDING

**Erik Mateljan, Emily Aftandilians, Benjamin Fanale,
Carol Paulick, Matin Davari, Petitioners**

People of the State of California, Respondent

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OPINIONS BELOW

The San Diego Superior Court, denied Petitioners Mateljan's and Aftandilians' consolidated motion to suppress and dismiss on January 21, 2003. *See*, Appendix B. It also denied Petitioners Fanale's, Davari's and Paulick's consolidated motion to suppress on March 19, 2003. *See*, Appendix C. Petitioners appealed. The Appellate Division of the San Diego Superior Court affirmed the trial courts' rulings without opinion.

The California Fourth District Court of Appeal, Division One, consolidated both sets of cases. It upheld the lowers courts' rulings, thus denying Petitioner's suppression motions based on Fourth Amendment, Due Process and Equal Protection claims. *People v. Mateljan*, 129 Cal.App.3d 367 (2005). *See*, Appendix A. Review was denied by the California Supreme Court. *People v. Mateljan*, 2005 Cal. LEXIS 9365 (Cal., Aug. 24, 2005). *See*, Appendix D.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the United States Constitution provides that no person shall be deprived of life, liberty or property without Due Process of Law.

The Sixth Amendment to the United States Constitution provides, in relevant part:

In all criminal prosecutions, the accused shall . . . be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution makes the above amendments applicable to the states and guarantees Due Process and Equal Protection under law.

STATEMENT OF THE CASE

Law enforcement agencies in the City and County of San Diego contracted with American Forensic Nurses ("AFN")¹ in 1999 to provide licensed medical personnel to draw suspects' blood in DUI cases. Pursuant to health and safety regulations only certain individuals were allowed to draw blood for forensic alcohol testing. AFN employees who called themselves "phlebotomists" were excluded from that statute. [Former] Veh. Code § 23158, subd. (a).

¹ AFN employed non-medical, unlicensed personnel to draw blood. The corporation, whose address is a Mail Boxes Etc. mail drop, is run out of the Palm Springs mansion of Faye Battiste-Otto. AFN has no storage facilities for medical supplies; employees follow no protocol for blood draws; employees are not supervised. Employees are not legally entitled to carry needles.